
(2014) 09 MP CK 0098
In the Madhya Pradesh High Court
Case No : Writ Petition No. 11750/2014

Shankarlal Pal

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2014) 09 MP CK 0098

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Aditya Khandekar, Learned Counsel, Advocate for the Appellant

Judgement

Sanjay Yadav, J.—Heard on admission.

2. Petitioner, a Driver, M.P. State Garage, Bhopal having being convicted for an offence under Section 304A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years with fine of Rs.1000/- has been terminated from services.

3. Petitioner challenges order dated 30.12.2013 passed by Superintendent, M.P. State Garage, Bhopal; whereby the services of the petitioner has been terminated contending inter alia that the sentence of the petitioner has been suspended and he is on bail and that the order of termination is improper & illegal and is liable to be quashed.

4. Order dated 30.12.2013 has also been challenged on the ground that the petitioner has been terminated from service without affording any opportunity of hearing.

5. The issue raised in this petition as to whether a conviction would lead to dismissal without affording any opportunity of hearing and that the incumbent having been enlarged on bail and sentence being suspended would give any right to the employee to seek mandamus for reinstatement, is no more res integra.

6. It has been held by a Full Bench of this Court in Laxmi Narayan Hayaran Vs. State of Madhya Pradesh and Another, while relying upon the aspect, held that an employee who has been convicted for an offence punishable under the provisions of Indian Penal Code is not entitled for any opportunity of hearing before being dismissed from service. It has been held :

"10. Rule 19 of the State CCA Rules is similar to Rule 14 of Railway Rules considered in Challappan (supra) and unamended Rule 19 of Central CCA Rules considered in Tulsiram Patel, which did not provide for any opportunity of hearing in regard to the penalty to be imposed. In Tulsiram Patel (supra), the Supreme Court has categorically held that no opportunity need be given to the employee concerned, but the disciplinary authority, on consideration of the facts and circumstances (in the manner set out in Challappan and Tulsiram Patel) may impose the penalty. It was also clarified that if the penalty imposed was whimsical or disproportionately excessive, the same was open to correction in judicial review. The subsequent decision of the Supreme Court in Sunil Kumar Sarkar (supra) dealt with the amended Rule 19 of the Central CCA Rules which provided for a hearing. Therefore, the principle laid down in Sunil Kumar Sarkar (supra) can not be of any assistance in interpreting Rule 19 of the State CCA Rules in the absence of an amendment in the State CCA Rules corresponding to the amendment made in the Central CCA Rules. As the State CCA Rules stand today, the law applicable is as laid down in Tulsiram Patel (supra) and not as laid down in Sunil Kumar Sarkar.

11. We accordingly overrule the decisions of the Division Bench in Tikaram (supra) and Sheetal Kumar Bandi (supra), in so far as they hold that the delinquent employee should be given a notice giving an opportunity to put forth his views as to the penalty proposed to be imposed.

12. The second premise in the Sheetal Kumar Bandi (supra) that in exercise of the power of judicial review, the Court can examine whether there was consideration of the relevant facts and circumstances by the disciplinary authority in imposing the penalty and correct the penalty if it is excessive, is in consonance with the decisions of the Supreme Court in Challappan, Shankar Dass, Tulsiram Patel and Sunil Kumar Sarkar (supra). If the conviction is for any minor offence which does not involve any moral turpitude, a punishment of removal or dismissal from service will certainly be excessive. But where the conviction is on the ground of corruption, as in this case, there can be no two views that imposition of punishment by way of dismissal is just and proper and not excessive.

13. The order dated 16-4-2004 passed under Rule 19 of the State CCA Rules imposing the penalty of dismissal on the petitioner can not be said to be excessive. The order does not suffer from any infirmity. In view of the aforesaid, the writ petition is dismissed."

7. In view of above proposition of law laid down by Full Bench of this Court in

Laxmi Narayan Hayaran vs. State of Madhya Pradesh (supra) and the fact that the petitioner having being convicted for an offence under Section 304A of the Indian Penal Code which has paved way for dismissal from service; no interference is caused.

8. In view whereof, no relief can be granted to the petitioner.

9. Consequently, petition fails and is dismissed. No costs.